

## V. Discussion

The Commission continues to believe that the proposed plan is an achievement in cooperation among the SRO participants, and will reduce unnecessary regulatory duplication by allocating to the designated SRO the responsibility for certain options-related sales practice matters that would otherwise be performed by multiple SROs. The plan promotes efficiency by reducing costs to firms that are members of more than one of the SRO participants. In addition, because the SRO participants coordinate their regulatory functions in accordance with the plan, the plan promotes, and will continue to promote, investor protection.

Under paragraph (c) of Rule 17d-2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The primary purpose of the amendment is to add NASDAQ as an SRO participant and to reflect the name change of NASD to FINRA. By declaring it effective today, the amended plan can become effective and be implemented concurrently with the Commission's approval of NASDAQ's new options facility, the NASDAQ Options Market.<sup>16</sup> In addition, the Commission notes that the prior version of this plan immediately prior to this proposed amendment was published for comment and the Commission did not receive any comments thereon.<sup>17</sup> Finally, the Commission does not believe that the amendment to the plan raises any new regulatory issues that the Commission has not previously considered.

## VI. Conclusion

This order gives effect to the amended plan submitted to the Commission that is contained in File No. S7-966.

*It is therefore ordered*, pursuant to Section 17(d) of the Act,<sup>18</sup> that the amended plan dated December 27, 2007 by and between the Amex, BSE, CBOE, ISE, FINRA, NASDAQ, NYSE, NYSE Arca, and Phlx filed pursuant to Rule 17d-2 is hereby approved and declared effective.

*It is further ordered* that those SRO participants that are not the DOEA as to a particular common member are

relieved of those regulatory responsibilities allocated to the common member's DOEA under the amended plan to the extent of such allocation.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

Nancy M. Morris,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57483; File No. SR-Amex-2008-22]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Widen the Spread Tolerances and Eliminate the Momentum Tolerances Built Into the AEMI System

March 12, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 11, 2008, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared substantially by the Amex. The Amex has submitted the proposed rule change under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Amex Rules 1A—AEMI, "Applicability, Definitions, References and Phase-In," and 128A—AEMI, "Automatic Execution," to reflect the widening of the spread tolerances and the elimination of the momentum tolerances built into the AEMI system. The Amex believes that these changes are necessary to enable the automated execution of orders and quotes ("Auto-Ex") to occur more continuously on the

Exchange, without unnecessary interruption.

The text of the proposed rule change is available at <http://www.amex.com>, the principal office of the Amex, and the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

Spread and momentum tolerances are built into AEMI whereby if the difference in price of any two consecutive executions (spread) or velocity of price changes over a specific time window (momentum) in any particular security exceed certain thresholds—a "breach"—Auto-Ex is disabled in that security.<sup>5</sup> Upon a breach, an Amex specialist would conduct an intra-day pair-off before Auto-Ex is restored. The Amex now believes that the tolerances, in their current form, are no longer essential to the proper functioning of an automated market, given that Regulation NMS<sup>6</sup> ensures price protection for automated quotations in other market centers that are priced better than the Amex top of book. Further, the Amex believes that the tolerances in their current form have not necessarily been effective in dampening price volatility (in contrast to Amex specialists' obligations to maintain reasonable depth with price continuity). The Amex also notes that its competitors, Nasdaq and NYSE Arca, do not impose such limitations on Auto-Ex in their markets.<sup>7</sup> Accordingly, the Amex believes that the time has come to modify its systems so that Auto-Ex can occur more continuously, without

<sup>5</sup> See Rule 128A—AEMI(f)(i)–(ii).

<sup>6</sup> 17 CFR 242.600 *et seq.*

<sup>7</sup> The Amex states that New York Stock Exchange Rule 1000(a)(iv) specifies that Auto-Ex will disable when a "liquidity replenishment point" is reached. According to the Amex, a liquidity replenishment point is a type of spread tolerance. The Amex states, further, that the NYSE does not have anything equivalent to a momentum tolerance.

<sup>16</sup> See Securities Exchange Act Release No. 57478 (March 12, 2008) (SR-NASDAQ-2007-004) (SR-NASDAQ-2007-080).

<sup>17</sup> See *supra* note 15 (citing to Securities Exchange Act Release No. 55532).

<sup>18</sup> 15 U.S.C. 78q(d).

<sup>19</sup> 17 CFR 200.30-3(a)(34).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

unnecessary interruptions by breaches, and believes that market quality will not be compromised by such changes.

The proposed changes would double the existing spread tolerances, and eliminate the momentum tolerances,<sup>8</sup> so that the automatic execution of trades by AEMI could occur more continuously during the trading day. The Amex states that Auto-Ex would be shut down only if: (i) There were a breach of a Tolerance (as re-defined by the proposal in Rule 128A—AEMI(g)); (ii) a systems, regulatory, or order imbalance issue required a halt to automatic trading, whereupon Auto-Ex would be re-enabled by the specialist via auction pair-off or re-opening pair-off, as per current practice; or (iii) if all liquidity on either side of the market in a particular security were momentarily exhausted, whereupon a non-firm stabilizing quote would be maintained until the specialist updated his firm quote, as per current practice.<sup>9</sup>

## 2. Statutory Basis

The Amex believes that the proposed rule change is designed to be consistent with Regulation NMS, as well as Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

<sup>8</sup> The Amex states that the "elimination" of the momentum tolerance (Rule 128A—AEMI(f)(ii)) will be accomplished systemically by re-setting the parameters programmed into AEMI at extreme values that should never be encountered, rather than eliminating the concept itself from AEMI, which would be a substantially more difficult system change.

<sup>9</sup> See Rule 1A—AEMI (defining stabilizing quote).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

## II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

The Amex has requested that the Commission waive the 30-day operative delay. The Commission hereby grants the Amex's request.<sup>14</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because other exchanges already operate in a manner proposed herein for AEMI, and the Amex's proposal does not appear to present any novel regulatory issues.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Amex to provide the Commission with written notice of its intention to file the proposed rule change, along with a brief description of the text of the proposed rule change, at least five business days prior to filing the proposal with the Commission, or such shorter time as designated by the Commission. The Commission has determined to waive the five-day period in this case.

<sup>14</sup> For purposes of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Number SR-Amex-2008-22 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2008-22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-Amex-2008-22 and should be submitted on or before April 8, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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<sup>15</sup> 17 CFR 200.30-3(a)(12).